

In the Supreme Court of Texas

IN RE CHRIS TURNER, IN HIS CAPACITY AS A MEMBER OF THE TEXAS HOUSE OF REPRESENTATIVES AND HIS CAPACITY AS CHAIR OF THE HOUSE DEMOCRATIC CAUCUS; TEXAS AFL-CIO; HOUSE DEMOCRATIC CAUCUS; MEXICAN AMERICAN LEGISLATIVE CAUCUS; TEXAS LEGISLATIVE BLACK CAUCUS; LEGISLATIVE STUDY GROUP; THE FOLLOWING IN THEIR CAPACITIES AS MEMBERS OF THE TEXAS HOUSE OF REPRESENTATIVES: ALMA ALLEN, RAFAEL ANCHÍA, MICHELLE BECKLEY, DIEGO BERNAL, RHETTA BOWERS, JOHN BUCY, ELIZABETH CAMPOS, TERRY CANALES, SHERYL COLE, GARNET COLEMAN, NICOLE COLLIER, PHILIP CORTEZ, JASMINE CROCKETT, YVONNE DAVIS, JOE DESHOTEL, ALEX DOMINGUEZ, HAROLD DUTTON, JR., ART FIERRO, BARBARA GERVIN-HAWKINS, JESSICA GONZÁLEZ, MARY GONZÁLEZ, VIKKI GOODWIN, BOBBY GUERRA, RYAN GUILLEN, ANA HERNANDEZ, GINA HINOJOSA, DONNA HOWARD, CELIA ISRAEL, ANN JOHNSON, JARVIS JOHNSON, JULIE JOHNSON, TRACY KING, OSCAR LONGORIA, RAY LOPEZ, EDDIE LUCIO III, ARMANDO MARTINEZ, TREY MARTINEZ FISCHER, TERRY MEZA, INA MINJAREZ, JOE MOODY, CHRISTINA MORALES, EDDIE MORALES, PENNY MORALES SHAW, SERGIO MUÑOZ, JR., VICTORIA NEAVE, CLAUDIA ORDAZ PEREZ, EVELINA ORTEGA, LEO PACHECO, MARY ANN PEREZ, ANA-MARIA RAMOS, RICHARD RAYMOND, RON REYNOLDS, EDDIE RODRIGUEZ, RAMON ROMERO, JR., TONI ROSE, JON ROSENTHAL, CARL SHERMAN, SR., JAMES TALARICO, SHAWN THIERRY, SENFRONIA THOMPSON, JOHN TURNER, HUBERT VO, ARMANDO WALLE, GENE WU, AND ERIN ZWIENER; AND THE FOLLOWING IN THEIR CAPACITIES AS LEGISLATIVE EMPLOYEES: KIMBERLY PAIGE BUFKIN, MICHELLE CASTILLO, RACHEL PIOTRZKOWSKI, AND DONOVON RODRIGUEZ,
Relators.

**Brief of *Amici Curiae* Former Speakers of the Texas House of Representatives
and former Lieutenant Governor of the State of Texas
in Support of Petition for Writ of Mandamus**

Jessica L. Ellsworth
(pro hac vice application forthcoming)
HOGAN LOVELLS US LLP

Blayne Thompson
State Bar No. 24088525
HOGAN LOVELLS US LLP

Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
(202) 637-5600
jessica.ellsworth@hoganlovells.com

609 Main Street
Suite 4200
Houston, TX 77002
(713) 632-1400
blayne.thompson@hoganlovells.com

Harmony R. Gbe
(pro hac vice application forthcoming)
HOGAN LOVELLS US LLP
1999 Avenue of the Stars
Suite 1400
Los Angeles, CA 90067
(310) 785-4600
harmony.gbe@hoganlovells.com

Counsel for Amici Curiae

IDENTITY OF PARTIES AND COUNSEL

Legislative Member and Caucus Relators:

House Democratic Caucus
Mexican American Legislative Caucus
Texas Legislative Black Caucus
Legislative Study Group
Alma Allen
Rafael Anchía
Michelle Beckley
Diego Bernal
Rhetta Bowers
John Bucy
Elizabeth Campos
Terry Canales
Sheryl Cole
Garnet Coleman
Nicole Collier
Philip Cortez
Jasmine Crockett
Yvonne Davis
Joe Deshotel
Alex Dominguez
Harold Dutton Jr.
Art Fierro
Barbara Gervin-Hawkins
Jessica González
Mary González
Vikki Goodwin
Bobby Guerra
Ryan Guillen
Ana Hernandez
Gina Hinojosa
Donna Howard
Celia Israel
Ann Johnson

Counsel for Legislative Member and Caucus Relators:

Chad W. Dunn
K. Scott Brazil
Brazil & Dunn, LLP
4407 Bee Caves Road, Suite 111
Austin, TX 78746
(512) 717-9822
chad@brazilanddunn.com
scott@brazilanddunn.com

Kevin E. Vickers
Brady & Peavey, PC
1122 Colorado Street, Suite 110
Austin, TX 78701
(512) 387-5910
kvickers@bradypeavey.com

Jarvis Johnson
Julie Johnson
Tracy King
Oscar Longoria
Ray Lopez
Eddie Lucio III
Armando Martinez
Trey Martinez Fischer
Terry Meza
Ina Minjarez
Joe Moody
Christina Morales
Eddie Morales
Penny Morales Shaw
Sergio Muñoz Jr.
Victoria Neave
Claudia Ordaz Perez
Evelina Ortega
Leo Pacheco
Mary Ann Perez
Ana-Maria Ramos
Richard Raymond
Ron Reynolds
Eddie Rodriguez
Ramon Romero Jr.
Toni Rose
Jon Rosenthal
Carl Sherman Sr.
James Talarico
Shawn Thierry
Senfronia Thompson
Chris Turner
John Turner
Hubert Vo
Armando Walle
Gene Wu
Erin Zwiener

Legislative Employee Relators:

Texas AFL-CIO
Kimberly Paige Bufkin
Michelle Castillo
Rachel Piotrkowski
Donovon J. Rodriguez

Counsel for Legislative Employee Relators:

Jim Dunnam
Andrea Mehta
Dunnam & Dunnam, LLP
4125 West Waco Drive
Waco, TX 76710
(254) 753-6437
jimdunnam@dunnamlaw.com
andreamehta@dunnamlaw.com

John T. Lewis
Skye L. Perryman
Jessica Anne Morton*
Sean A. Lev*
Democracy Forward Foundation
655 15th Street NW, Suite 800
Washington, DC 20005
(202) 448-9090
jlewis@democracyforward.org
sperryman@democracyforward.org
jmorton@democracyforward.org

* Application for admission *pro hac vice* forthcoming

Respondents:

Jose A. Esparza, in his official capacity as Deputy Secretary of State and Acting Secretary of State of the State of Texas

Gregory S. Davidson, in his official capacity as Executive Clerk to the Governor

Counsel for Respondents:

Ken Paxton
Brent Webster
Judd E. Stone II (lead counsel)
Lanora C. Pettit
Bill Davis
Michael R. Abrams
Kyle D. Highful
Office of the Attorney General
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
Judd.Stone@oag.texas.gov

Glenn Hegar, in his official
capacity as Comptroller of Public
Accounts of the State of Texas

Amici Curiae:

Joseph Richard Straus III
James Earl Laney
William Ratliff

Counsel for Amici Curiae:

HOGAN LOVELLS US LLP

Jessica L. Ellsworth
(pro hac vice forthcoming)
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
Tel: (202) 637-5600
Fax: (202) 637-5910
jessica.ellsworth@hoganlovells.com

Blayne Thompson
State Bar No. 24088525
609 Main Street, Suite 4200
Houston, TX 77002
Tel: (713) 632-1400
Fax: (713) 632-1401
blayne.thompson@hoganlovells.com

Harmony R. Gbe
(pro hac vice forthcoming)
1999 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067
Tel: (310) 785-4600
Fax: (301) 785-4601
harmony.gbe@hoganlovells.com

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IDENTITY AND INTEREST OF *AMICUS CURIAE*

This brief is tendered on behalf of Joseph (“Joe”) Richard Straus III, James Earl (“Pete”) Laney, and William (“Bill”) Ratliff, and has been prepared pro bono by undersigned counsel at Hogan Lovells US LLP.

Amici are former speakers of the Texas House of Representatives from both the Republican and Democratic parties and a former Lieutenant Governor of Texas. They share an interest in fighting executive overreach and in protecting the Texas constitution.

Specifically, *amici* include:

Joe Straus served as the Speaker of the Texas House of Representatives from 2009-2019. He represented District 121 as a Republican from his first election to the House in 2005 until his retirement in 2019.

Pete Laney was a member of the Texas House of Representatives from 1973-2007 and served as House Speaker from 1993-2003. He represented Hale County as well as more than a dozen other counties in West Texas as a Democrat.

Bill Ratliff served as a member of the Texas Senate from 1989-2004, representing the 1st District as a Republican. From 1997-1998, he served as President Pro Tempore of the Texas Senate. From 2000-2003, he served as the 40th lieutenant governor of Texas.

INTRODUCTION

Amici are a bipartisan group of former leaders of the House and Senate in Texas and the Lieutenant Governorship. They have over sixty years of collective experience in leadership in Texas government. From their service, they have first-hand experience with the limits placed on each of the three departments of government by Texas's Constitution, which has an explicit separation-of-powers command dating back to the Republic of Texas and Texas's admission to the United States.

Article II of the Texas Constitution specifically states:

ARTICLE 2. THE POWERS OF GOVERNMENT

Sec. 1. SEPARATION OF POWERS OF GOVERNMENT AMONG THREE DEPARTMENTS. The powers of the Government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are Legislative to one; those which are Executive to another, and those which are Judicial to another; and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

The Governor's veto of Article X of SB 1 is an attempt to intimidate members of the Legislature and circumvent democracy by vetoing the appropriations that fund operations of a separate branch of government. This action should be rebuked by people of all political persuasions. By constitutional design, Members of the Legislature are not controlled by any Governor—Republican or Democrat. In the face of such unprecedented action by the Executive, mandamus is warranted.

ARGUMENT

As Former Leaders in Texas State Government From Both Parties, *Amici* Submit This Brief to Emphasize that the Governor’s Veto Is a Threat to Texas’s System of Government.

Texas has expressly protected separation of powers dating back to its days as a Republic. Article 1, section 1, of the 1836 Constitution for the Republic of Texas stated: “The powers of this Government shall be divided into three departments, viz: Legislative, Executive and Judicial, *which shall remain forever separate and distinct.*” See Constitution of Republic of Texas, Laws of the Republic of Texas, in Two Volumes. Houston: Printed at the Office of the Telegraph, 1838, vol. 1, pp. 9-25. Streeter 275, available at <https://tarlton.law.utexas.edu/constitutions/republic-texas-1836>. Substantially identical separation-of-powers clauses appeared in all four of the State’s constitutions since statehood in 1845. See generally Harold H. Bruff, *Separation of Powers under the Texas Constitution*, 68 Tex. L. Rev. 1337, 1338 (1990).

This Court has highlighted that separation of powers is “the absolutely central guarantee of a just Government.” *Fin. Comm’n of Tex. v. Norwood*, 418 S.W.3d 566, 569-570 (Tex. 2013) (quoting *Morrison v. Olson*, 487 U.S. 654, 697 (1988) (Scalia, J., dissenting)) (emphasis added). And it has consistently adhered to the limits on the Judiciary’s authority that are imposed by the State’s commitment to separation of powers. *E.g., In re Hotze*, No. 20-0739, 2020 WL 5919726, at *3 (Tex.

Oct. 7, 2020) (“Just as other government officials must not exceed their rightful power in extraordinary circumstances, this Court also must not do so.”) (quoting *In re Salon a la Mode*, — S.W.3d —, —, 2020 WL 2125844 (Tex. 2020) (Blacklock, J., concurring)).

Relators’ petition for writ of mandamus here correctly asserts that the Governor’s veto of the Legislature’s entire operating budget is a matter of Executive overreach that runs afoul of the Texas constitution. In a situation where one branch of government interferes with the effective exercise of another branch’s constitutional duties, or assumes powers outside its own branch, it is the obligation of the Judiciary to protect the balance of power and defend the constitutional order that has governed in Texas for almost two centuries. That is the situation here. The Governor has used his veto power to render inoperable a co-equal branch of government. Doing so infringes the Legislature’s powers to appropriate funds, provide compensation for officers, and make law for the citizens of this State.

Collectively, *amici* have six decades of experience with the process of introducing, debating, enacting, or voting down the laws that govern in Texas. They are intimately familiar with the Legislature’s carefully constructed rules for that process, and the negotiations and compromises that often result. The veto here unduly interferes with essential functions that are critical to the operation of Texas’s government. It also eliminates the funding for crucial non-partisan legislative

agencies, that are critical to research, fiscal analyses, and preparation of potential new legislation. *Amici* respectfully request that this Court grant the petition and hold ineffective the Governor's veto of the funding for all operations by the Legislative branch.

CONCLUSION

To preserve Texas' commitment to separate, coequal branches of government, and to ensure that the Legislature is able to continue to function, *Amici* urge this Court to find the Governor's attempted veto is unconstitutional.

Respectfully submitted,

HOGAN LOVELLS US LLP

Dated: July 5, 2021

/s/ Blayne Thompson

Blayne Thompson

State Bar No. 24088525

609 Main Street, Suite 4200

Houston, TX 77002

Tel: (713) 632-1400

Fax: (713) 632-1401

blayne.thompson@hoganlovells.com

Jessica L. Ellsworth*

(pro hac vice forthcoming)

Columbia Square

555 Thirteenth Street, NW

Washington, DC 20004

Tel: (202) 637-5600

Fax: (202) 637-5910

jessica.ellsworth@hoganlovells.com

Harmony R. Gbe*

(pro hac vice forthcoming)

1999 Avenue of the Stars, Suite 1400

Los Angeles, CA 90067

Tel: (310) 785-4600

Fax: (301) 785-4601

harmony.gbe@hoganlovells.com

Counsel for Amici Curiae

CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that this petition complies with the typeface requirements of TEX. R. APP. P. 9.4(e), because it has been printed in a conventional typeface no smaller than 14-point except for footnotes, which are no smaller than 12-point. This document also complies with the word-count limitations of TEX. R. APP. P. 9.4(i), because it contains less than 4,500 words, excluding any parts exempted by TEX. R. APP. P. 9.4(i)(1).

/s/ Blayne Thompson

Blayne Thompson

CERTIFICATE OF SERVICE

On July 5, 2021, I electronically filed this Amicus Brief in Support of Petition for Writ of Mandamus with the Clerk of Court using the eFile.TXCourts.gov electronic filing system, which will send notification of the filing to all parties of record.

/s/ Blayne Thompson
Blayne Thompson